

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TODD R., et al.,

CASE NO. C17-1041JLR

Plaintiffs.

ORDER GRANTING IN PART
AND DENYING IN PART
PLAINTIFFS' MOTION TO FILE
AN AMENDED COMPLAINT

PREMERA BLUE CROSS BLUE
SHIELD OF ALASKA,

Defendant.

I. INTRODUCTION

Before the court is Plaintiffs Todd R., Suzanne R., and Lillian R.’s (collectively, “Plaintiffs”) motion for leave to file an amended complaint. (Mot. (Dkt. # 93); Proposed FAC (Dkt. # 96-1).) Defendant Premera Blue Cross Blue Shield of Alaska (“Premera”) opposes the motion. (Resp. (Dkt. # 97).) Having considered the submissions of the

1 parties and the relevant law,¹ the court GRANTS in part and DENIES in part Plaintiffs'
 2 motion to amend.

3 **II. BACKGROUND**

4 This case returns to the court after the Ninth Circuit vacated and remanded the
 5 court's previous decision. (Mem. From USCA (Dkt. # 88)); *Todd R. v. Premera Blue*
 6 *Cross Blue Shield of Alaska*, 825 F. App'x 440, 441 (9th Cir. 2020) (vacating 1/30/19
 7 Order (Dkt. # 50) and remanding).

8 On April 28, 2017, Plaintiffs filed this action after Premera denied coverage for
 9 care that Lillian R. received at Elevations Resident Treatment Center. (See Compl. (Dkt.
 10 # 2).) On January 30, 2019, the court ruled in favor of Plaintiffs based on the sixth
 11 medical necessity factor in Premera's Medical Policy, which covers care when a
 12 "[p]atient has currently stabilized during inpatient treatment stay for severe symptoms or
 13 behavior and requires a structured setting with continued around-the-clock behavioral
 14 care." (1/30/19 Order ¶¶ 8, 11.) On February 12, 2019, Premera filed a motion for
 15 reconsideration. (MFR (Dkt. # 52).) Premera submitted several exhibits with this
 16 motion, including documents that addressed the interpretation of certain definitions in the
 17 Medical Policy. (See Payton Decl. (Dkt. ## 53, 55 (sealed))).) On April 30, 2019, the
 18 court denied Premera's motion for reconsideration. (4/30/19 Order (Dkt. # 77).)

19 Premera appealed (Not. of Appeal (Dkt. # 81)), and the Ninth Circuit vacated the
 20 court's ruling and remanded, *see Todd R.*, 825 F. App'x at 441. The Ninth Circuit found
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22 ¹ No party requests oral argument, and the court concludes that oral argument would not
 be helpful to its disposition of the motion. *See* Local Rules W.D. Wash. LCR 7(b)(4).

1 that this court had *sua sponte* developed the theory regarding the Medical Policy's sixth
2 factor. *Id.* ("At no point below had Plaintiffs argued, or even so much as hinted, . . . that
3 any Medical Policy factors had been satisfied.") (internal quotation marks omitted). The
4 Ninth Circuit cited the principle of party presentation and remanded for the court to
5 resolve "the party-presented controversy." *Id.* at 442 (citing *United States v. Sineneng-*
6 *Smith*, --- U.S. ---, 140 S. Ct. 1575, 1581-82 (2020)).

7 After remand, the parties expressed their intent to file cross motions for judgment
8 under Federal Rule of Civil Procedure 52. (JSR (Dkt. # 91) at 1.) The parties requested a
9 deadline of November 6, 2020, to submit any amended pleadings, though Premera
10 expressed that any amended pleadings would be inappropriate. (*Id.*) The court, noting
11 that the previous deadline for amending pleadings was June 13, 2018, established a
12 November 6, 2020, deadline for Plaintiffs to move to amend their complaint. (10/16/20
13 Order (Dkt. # 92).) Plaintiffs filed their motion to amend on November 6, 2020. (Mot.)

14 **III. ANALYSIS**

15 Plaintiffs seek to amend their complaint to include allegations regarding
16 communications between Premera and Plaintiffs about Premera's medical necessity
17 factors and the criteria Premera used to evaluate Lillian R.'s claim. (*See* Proposed FAC
18 ¶¶ 33-38, 41-43, 45-46.) Plaintiffs also seek to include allegations that Premera did not
19 produce key documents during the pre-litigation appeal process or during the instant
20 litigation, despite the fact that these documents informed Premera's analysis and decision
21 to deny coverage. (*Id.* ¶ 50-53.) Finally, Plaintiffs also seek to clarify the name and
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1 pronouns of Plaintiff Lillian R. (*See generally id.*) The court concludes that only the
 2 final category of proposed amendments is proper.

3 **A. Legal Standard**

4 Once the court files a pretrial scheduling order pursuant to Federal Rule of Civil
 5 Procedure 16 and the deadline for amending a pleading has passed, a party's motion to
 6 amend a pleading is governed by Rule 16. *See Johnson v. Mammoth Recreations, Inc.*,
 7 975 F.2d 604, 607-08 (9th Cir. 1992). Under Rule 16, a party must show "good cause"
 8 for an amendment to justify modifying the case schedule. Fed. R. Civ. P. 16(b)(4) ("A
 9 schedule may be modified only for good cause and with the judge's consent."); *see also*
 10 *Johnson*, 975 F.2d at 608. "Rule 16(b)'s 'good cause' standard primarily considers the
 11 diligence of the party seeking the amendment." *Johnson*, 975 F.2d at 609. To show
 12 "good cause" a party must show that it could not meet the deadline imposed by the
 13 scheduling order despite its diligence. *Id.* "[F]ailure to complete discovery within the
 14 time allowed is not recognized as good cause." (Sched. Order (Dkt. # 26) at 2.)

15 If a party shows "good cause" to amend the case schedule under Rule 16, it must
 16 then demonstrate that amending the pleading at issue is proper under Rule 15. *See*
 17 *Johnson*, 975 F.2d at 608; *MMMT Holdings Corp. v. NSGI Holdings, Inc.*, No. C12-
 18 01570RSL, 2014 WL 2573290, at *2 (W.D. Wash. June 9, 2014). Under Rule 15, the
 19 court should "freely give" leave to amend a pleading "when justice so requires." Fed. R.
 20 Civ. P. 15(a)(2). Five factors are used to assess the propriety of amendment: (1) bad
 21 faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment, and
 22 (5) whether the party has previously amended its pleading. *Allen v. City of Beverly Hills*,

1 911 F.2d 367, 373 (9th Cir. 1990) (citing *Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d
 2 1149, 1160 (9th Cir. 1989)).

3 **B. Proposed Substantive Amendments**

4 Plaintiffs contend they have established good cause because they have been
 5 diligent and only seek to amend their complaint after the court-established deadline
 6 because of Premera’s late disclosure of documents related to the sixth medical necessity
 7 factor. (Mot. at 3-5.) The court disagrees. Premera only introduced these documents in
 8 a motion for reconsideration of the court’s vacated order. (See MFR; Payton Decl.) The
 9 Ninth Circuit found that the legal rational underlying that order was not presented by the
 10 parties. *Todd R.*, 825 F. App’x at 441 (“Even after the district court issued a scheduling
 11 order instructing the parties to address the Medical Policy’s sixth factor at their hearing,
 12 Plaintiffs still did not advance the theory on which the district court relied.”) On remand,
 13 the Ninth Circuit has instructed this court to decide only the controversy presented by the
 14 parties. *Id.* at 442 (citing *Sineneng-Smith* 140 S. Ct. at 1581-82 (remanding a case “for
 15 reconsideration shorn of the [legal arguments] interjected by the [court] and bearing a fair
 16 resemblance to the case shaped by the parties.”)).

17 Plaintiffs may not now amend their complaint to include the theory undergirding
 18 the court’s vacated order in the hope that it will then be viewed as a “party-presented”
 19 controversy. Allowing such an amendment would render the Ninth Circuit’s order
 20 meaningless. *Cf. United States v. Thrasher*, 483 F.3d 977, 981 (9th Cir. 2007) (“The
 21 [district court] is bound by the decree as the law of the case, and must carry it into
 22 execution according to the mandate.”) (*quoting In re Sanford Fork & Tool Co.*, 160 U.S.

1 247, 255-56 (1895).) Premera's introduction of documents that may be relevant to this
2 theory is not persuasive because they were only introduced in response to the court's
3 now-vacated order. In accordance with the Ninth Circuit's instructions, the court will
4 rule on the controversy as presented by the Plaintiff in their complaint as it existed before
5 the court's vacated order. *See Todd R.*, 825 F. App'x at 442. Thus, the court holds that,
6 in light of the Ninth Circuit's order to rule on the party-presented controversy, Plaintiffs
7 have failed to establish good cause for amendment under Rule 16. To the extent that
8 Plaintiffs' proposed amendments contain any substantive changes, Plaintiffs' motion to
9 amend is denied.

10 **C. Proposed Amendments Regarding Name and Pronouns of Lillian R.**

11 Plaintiffs' proposed amended complaint also clarifies the name and pronouns of
12 Lillian R. (*See generally* Proposed FAC.) The court will allow these proposed
13 amendments. If Plaintiffs wish to file an amended complaint with these changes, and no
14 others, they may do so no later than seven days of the issuance of this order.

15 **IV. CONCLUSION**

16 For the foregoing reasons, the court GRANTS in part and DENIES in part

17 Plaintiffs' motion for leave to file an amended complaint (Dkt. # 93). Plaintiffs may file

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1 an amended complaint clarifying the name and pronouns of Plaintiff Lillian R. within
2 seven days of the issuance of this order.

3 Dated this 1st day of February, 2021.

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7 JAMES L. ROBART
8 United States District Judge
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